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ABSTRACT

This report presents information on Wisconsin state legislation dealing with mental health issues. Part I provides descriptions of key provisions of four 1987 state senate bills. Part II reviews the activities of the Wisconsin State Legislative Council's Special Committee on Mental Health Issues. Parts III, IV, V, and VI describe the background and major provisions of the four mental health bills: (1) 1987 Senate Bill 351, relating to commitment standards and procedures for and alternatives to commitment; (2) 1987 Senate Bill 352, relating to outpatient mental health treatment of minors 14 years of age or older; (3) 1987 Senate Bill 353, relating to local assistance for community support programs and guardianship grants; and (4) 1987 Senate Bill 680, relating to services for and commitments of mentally ill inmates and criminally committed persons. Appendices list committee votes, current commitment standards, and materials from the Special Committee on Mental Health Issues and the Advisory Committee on Mentally Ill Inmates. (NB)

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WISCONSIN LEGISLATIVE COUNCIL

REPORT NO. 13 TO THE 1987 LEGISLATURE

ED292035
CG 020642

# LEGISLATION ON MENTAL HEALTH ISSUES

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| 1987 SENATE BILL 351, | RELATING TO COMMITMENT STANDARDS AND PROCEDURES FOR AND ALTERNATIVES TO COMMITMENT |
| 1987 SENATE BILL 352, | RELATING TO OUTPATIENT MENTAL HEALTH TREATMENT OF MINORS 14 YEARS OF AGE OR OLDER |
| 1987 SENATE BILL 353, | RELATING TO LOCAL ASSISTANCE FOR COMMUNITY SUPPORT PROGRAMS AND GUARDIANSHIP GRANTS |
| 1987 ASSEMBLY BILL 680, | RELATING TO SERVICES FOR AND COMMITMENTS OF MENTALLY ILL INMATES AND CRIMINALLY COMMITTED PERSONS |

LEGISLATIVE COUNCIL STAFF
STATE CAPITOL
MADISON, WISCONSIN

OCTOBER 16, 1987

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WISCONSIN LEGISLATIVE COUNCIL
REPORT NO. 13 TO THE 1987 LEGISLATURE*

# LEGISLATION ON MENTAL HEALTH ISSUES

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## PART I

## KEY PROVISIONS OF 1987 BILLS

### A. 1987 SENATE BILL 351, RELATING TO COMMITMENT STANDARDS AND PROCEDURES FOR AND ALTERNATIVES TO COMMITMENT

1. Expands the third and fourth standards of dangerousness to permit commitment or detention of: (a) a person who will not avail himself or herself of available community services; or (b) a person for whom food, shelter or other care is provided by family members or others not associated with treatment programs {see Appendix 2 for the four current commitment standards}.

2. Creates standards and procedures for guardianship and authorization of court-ordered medications for persons who are chronically mentally ill.

3. Requires the evaluation of committed persons 21 days prior to the expiration of the person's period of commitment.

4. Establishes procedures and standards for court-supervised treatment under a settlement agreement as an alternative to commitment.

5. Provides a presumption of good faith on the part of individuals initiating emergency detentions.

6. Requires special training for law enforcement officers in emergency detention and emergency protective placement procedures.

7. Requires health care coverage by health maintenance organizations, limited service health organizations and preferred provider plans of court-ordered mental health treatment of enrolled participants.

### B. 1987 SENATE BILL 352, RELATING TO OUTPATIENT MENTAL HEALTH TREATMENT OF MINORS 14 YEARS OF AGE OR OLDER

Creates a new review procedure for use in cases where either a minor age 14 years or older, or the minor's parent or guardian, refuses to provide informed consent for outpatient mental health treatment of the minor.

C. 1987 SENATE BILL 353, RELATING TO LOCAL ASSISTANCE FOR COMMUNITY SUPPORT PROGRAMS AND GUARDIANSHIP GRANTS

1. Directs the Department of Health and Social Services (DHSS) to submit to the Federal Health Care Financing Administration any amendments to the state Medical Assistance plan which are necessary to obtain federal financial participation under Medical Assistance for community support program services and to begin certifying eligible community support programs for Medical Assistance reimbursement by January 1, 1988.

2. Creates a one-time $1 million grant program for assisting counties in improving their community support programs so that they meet provider standards under the Federal Medical Assistance Program.

3. Creates a $1 million annual community support program appropriation to be distributed to counties based on their performance in providing community support program services to chronically mentally ill persons.

4. Directs the DHSS to develop and conduct training programs for community support program staff.

5. Creates a guardianship grant program for recruiting, training, monitoring and assisting guardians for persons determined to be incompetent; also creates a $250,000 appropriation for the DHSS to administer the program.

D. 1987 ASSEMBLY BILL 680, RELATING TO SERVICES FOR AND COMMITMENTS OF MENTALLY ILL INMATES AND CRIMINALLY COMMITTED PERSONS

1. Requires the DHSS to establish program standards for jails, including requirements that each jail develop a written policy and procedure manual and have crisis intervention services available 24 hours per day.

2. Directs the DHSS to establish an office of jails.

3. Increases the required number of hours of preparatory jail officer training and specifically requires training on "special needs" inmates.

4. Repeals a "sunset" provision which currently applies to an alternative commitment standard for state prison inmates.

5. Creates an alternative commitment standard for inmates who have been sentenced to jail, with a July 1, 1991 sunset date.

6. Specifies that law enforcement officers may initiate an emergency detention based on information reported by probation and parole officers.

7. Extends the time periods during which persons, committed under the "not guilty by reason of mental disease or defect" defense and conditionally released, may be redetained or supervised.

## PART II

## COMMITTEE ACTIVITY

### A. SPECIAL COMMITTEE ON MENTAL HEALTH ISSUES

#### 1. Assignment

The Legislative Council established the Special Committee on Mental Health Issues by a mail ballot on February 20, 1986. The Committee was directed to:

> ...undertake a thorough examination of present mental health concerns, including a study of: (a) community and institutional programs and services for the mentally ill; (b) present civil commitment standards and alternatives thereto; and (c) services available to the mentally ill in prisons and jails.

The members of the Special Committee on Mental Health Issues, appointed by a June 17, 1986 mail ballot, included three Senators, five Representatives and 11 Public Members. [One member, originally appointed as a Senator, was subsequently appointed as a Public Member.]

During 1986 and 1987, the Special Committee held nine meetings at the State Capitol, in Madison, on the following dates:

| | |
|---|---|
| July 24, 1986 | February 17, 1987 |
| September 16, 1986 | March 23, 1987 |
| November 11, 1986 | April 8, 1987 |
| December 22, 1986 | May 1, 1987 |
| January 20, 1987 | |

#### 2. Summary of Meetings

At the July 24, September 16 and November 11, 1986 meetings, the Committee heard from a number of persons, including the Secretary of DHSS, representatives of mental health agencies under s. 51.42, Stats., and a county probate court commissioner. At those meetings, the Committee also reviewed numerous staff documents and other materials and discussed its assignment.

At the six meetings held from December 22, 1986 to May 1, 1987, the Committee continued to review information requested by it and to discuss

its assignment. At those meetings, the Committee also developed, revised and took final action on the bill drafts which contain its recommendations. The Committee received and took action on the recommendations of the Advisory Committee on Mentally Ill Inmates at its February 17, 1987 meeting.

During the course of its work, the Committee approved 22 separate bill drafts for recommendation to the Legislative Council, including four separate drafts recommended by the Advisory Committee. At its final meeting on May 1, 1987, the Committee adopted a motion authorizing staff, with the approval of the Chairperson of the Special Committee, to combine the 22 separate drafts in a manner appropriate for presentation to the Legislative Council and introduction into the Legislature. The four Bills described in Parts III, IV, V and VI of the Report were prepared pursuant to that authorization; 1987 Senate Bills 351, 352 and 353 include the recommendations of the Special Committee and 1987 Assembly Bill 680 includes the recommendations of the Advisory Committee, as amended by the Special Committee.

3. Committee and Council Votes

a. 1987 Senate Bill 351, relating to commitment standards and procedures for and alternatives to commitment

Appendix 1 lists the votes of the Special Committee on Mental Health Issues on each of the 13 separate drafts which were combined into the proposal recommended to the Legislative Council.

At its June 11, 1987 meeting, the Legislative Council voted to introduce the proposal in the 1987 Legislative Session by a vote of Ayes, 20 (Speaker Loftus; Sen. Risser; Reps. Nelsen, Bell, Bradley, Clarenbach, Coggs, Hauke, Prosser, Schneider and Tesmer; Sens. Czarnezki, Davis, Engeleiter, George, Harsdorf, Kreul, Lee, Moen and Strohl); Noes, 0; and Absent, 1 (Rep. McEssy).

b. 1987 Senate Bill 352, relating to outpatient mental health treatment of minors 14 years of age or older

As indicated in Appendix 1, at its May 1, 1987 meeting, the Special Committee on Mental Health Issues recommended that the Legislative Council introduce the proposal by unanimous consent.

At its June 11, 1987 meeting, the Legislative Council voted to introduce the proposal in the 1987 Legislative Session by a vote of Ayes, 20 (Speaker Loftus; Sen. Risser; Reps. Nelsen, Bell, Bradley, Clarenbach, Coggs, Hauke, Prosser, Schneider and Tesmer; Sens. Czarnezki, Davis,

Engeleiter, George, Harsdorf, Kreul, Lee, Moen and Strohl); Noes, 0; and Absent, 1 (Rep. McEssy).

c. 1987 Senate Bill 353, relating to local assistance for community support programs and guardianship grants

Appendix 1 lists the votes of the Special Committee on Mental Health Issues on each of the four separate bill drafts which were combined into the proposal recommended to the Legislative Council.

At its June 11, 1987 meeting, the Legislative Council voted to introduce the proposal in the 1987 Legislative Session by a vote of Ayes, 20 (Speaker Loftus; Sen. Risser; Reps. Nelsen, Bell, Bradley, Clarenbach, Coggs, Hauke, Prosser, Schneider and Tesmer; Sens. Czarnezki, Davis, Engeleiter, George, Harsdorf, Kreul, Lee, Moen and Strohl); Noes, 0; and Absent, 1 (Rep. McEssy).

## 4. Staff Materials

Appendix 3 lists all materials received by the Special Committee. The following documents, prepared by the Council staff, may be of particular interest. These, as well as other materials listed in Appendix 3, are available at the Legislative Council offices:

- Staff Brief 86-7, The Legal Framework for Care and Treatment of the Mentally Ill (July 16, 1986).
- Staff Brief 86-8, Mental Health Services in Wisconsin (July 16, 1986).
- Discussion Paper 86-4, Possible Changes in the Laws Relating to Court-Ordered Involuntary Treatment of the Mentally Ill (November 4, 1986).

## B. ADVISORY COMMITTEE ON MENTALLY ILL INMATES

### 1. Assignment

To assist the Special Committee on Mental Health Issues, the Legislative Council established the Advisory Committee on Mentally Ill Inmates by an April 15, 1986 mail ballot. The Advisory Committee was directed to study:

> ...problems related to the care and treatment of mentally ill inmates in county jails and state

prisons, with emphasis on the chronically mentally ill.

The Advisory Committee was directed to report its recommendations to the Special Committee on Mental Health Issues.

The members of the Advisory Committee on Mentally Ill Inmates, appointed by a June 17, 1986 mail ballot, consisted of four Representatives, one Senator and eight Public Members. {One member, originally appointed as a Senator, was subsequently appointed as a Public Member.}

During 1986 and 1987, the Advisory Committee held five meetings, in Madison, on the following dates:

| | |
|---|---|
| July 1, 1986 | December 11, 1986 |
| September 17, 1986 | January 23, 1987 |
| November 6, 1986 | |

All of these meetings were held at the State Capitol, in Madison, except for the September 17, 1986 meeting which was held in the City-County Building, 210 Martin Luther King, Jr. Boulevard, Madison.

2. Summary of Meetings

At its September 17 and November 6, 1986 meetings, the Committee heard from numerous persons, including sheriffs and other jail administrators; mental health professionals who work with jail inmates and persons on probation and parole; representatives of mental health agencies created under s. 51.42, Stats.; probation and parole agents; the Public Defender's Office; the Division of Corrections (DOC); the Office of Mental Health in the DHSS; and persons involved in developing jail officer training programs approved by the Law Enforcement Standards Board. At its December 11, 1986 meeting, the Advisory Committee discussed issues and directed staff to prepare bill drafts for its further consideration.

At its January 23, 1987 meeting, the Advisory Committee took final action on its recommendations.

The Advisory Committee on Mentally Ill Inmates reported its final recommendations to the Special Committee on Mental Health Issues at the February 17, 1987 meeting of the Special Committee. At its final meeting on May 1, 1987, the Special Committee adopted a motion authorizing staff, with the approval of the Chairperson of the Special Committee, to combine the drafts reflecting the recommendations of the Advisory Committee in a manner appropriate for presentation to the Legislative Council and

introduction into the Legislature. 1987 Assembly Bill 680, described in Part VI of the Report, contains the four drafts included in the final recommendation of the Advisory Committee, as amended by the Special Committee.

3. Committee and Council Votes

Appendix 1 lists the votes of the Advisory Committee on Mentally Ill Inmates and the Special Committee on Mental Health Issues on each of the four separate drafts which were combined into the proposal recommended to the Legislative Council.

At its June 11, 1987 meeting, the Legislative Council voted to introduce the proposal in the 1987 Legislative Session by a vote of Ayes, 20 (Speaker Loftus; Sen. Risser; Reps. Nelsen, Bell, Bradley, Clarenbach, Coggs, Hauke, Prosser, Schneider and Tesmer; Sens. Czarnezki, Davis, Engeleiter, George, Harsdorf, Kreul, Lee, Moen and Strohl); Noes, 0; and Absent, 1 (Rep. McEssy).

4. Staff Materials

Appendix 4 lists all materials received by the Advisory Committee. The following documents, prepared by the Council staff, may be of particular interest. These, as well as other materials listed in Appendix 4, are available at the Legislative Council offices:

- Staff Brief 86-10, Mental Health Services to State Corrections Inmates (July 23, 1986).
- Staff Brief 86-11, State Requirements and Assistance Relating to Mental Health Services for Inmates of County Jails (July 24, 1986).
- Discussion Paper 86-6, Possible Changes in Laws and Programs Related to Mentally Ill Inmates (December 3, 1986).

## PART III

## DESCRIPTION OF 1987 SENATE BILL 351

### A. BACKGROUND

#### 1. Commitment Standards and Procedures and Alternatives to Commitment

The Special Committee was created in response to concerns, expressed by Legislators and others, that current involuntary commitment standards do not effectively ensure the treatment of all persons who need treatment but are unwilling to seek it on a voluntary basis. The Special Committee examined both current commitment standards and current commitment-related procedures and practices to determine where those standards, procedures and practices are unsuccessful in obtaining treatment for mentally ill persons or in ensuring that persons are treated in settings which are least restrictive of their personal freedom.

During its discussions, the Special Committee identified different types of mentally ill persons who are not receiving treatment under current law, including:

a. Persons who, but for care provided by family members, would meet one or more of the dangerousness standards for commitment;

b. Chronically mentally ill persons who have discontinued their treatment and begin to exhibit symptoms of recurring mental illness, but who do not meet any of the current dangerousness standards; and

c. Other mentally ill persons who need treatment but will not agree to it on a voluntary basis and are not dangerous to themselves or others.

The Special Committee also discussed the problems of families of mentally ill persons who are unable to obtain appropriate treatment for these persons, either through the courts or directly through the county programs.

The Committee discussed, at length, the difficulties in initiating emergency detentions; tracking persons through commitment proceedings and obtaining treatment for them; ensuring that counties do not lose track of persons when their commitment periods expire; and ensuring that commitment options include community-based treatment, where appropriate.

In reviewing commitment standards and related procedures, the Special Committee discussed procedures and related treatment options used in some, but not all, counties that appear to be effective in ensuring that

mentally ill persons are provided with the most appropriate treatment. For example, the Special Committee received testimony from a Dane County probate court commissioner on the limited guardianship procedure currently used in Dane County to provide outpatient treatment for chronically mentally ill persons without requiring a commitment order. The Special Committee also considered the negotiated settlement procedure currently used in Milwaukee County to obtain voluntary treatment for the subject of a commitment proceeding under a court-approved treatment plan.

The Special Committee concluded that both the limited guardianship procedure, used in Dane County, and the negotiated settlement procedure, used in Milwaukee County, are examples of effective procedures for obtaining treatment for mentally ill persons. Its recommendations include proposals for specific statutory authorization and procedures for both of these processes.

The Special Committee found that one bar to obtaining treatment for mentally ill persons who are incapable of caring for themselves is the defense, under the current third and fourth standards for commitment relating to community care. This defense does not permit the involuntary commitment of persons, under those standards, if reasonable provision for their protection is available in the community. {The current commitment standards are reproduced in Appendix 2.} In many cases, this defense applies to mentally ill persons who are cared for by family members but who cannot care for themselves. This defense also applies to mentally ill persons for whom community-based treatment is available, but who will not voluntarily use these services. The Special Committee concluded that, if either of these types of persons otherwise meet the third or fourth standards of dangerousness, involuntary commitment should be allowed.

The Special Committee examined commitment standards based on factors other than dangerousness which are embodied in the laws of other states and in bills introduced during prior legislative sessions. These alternate commitment standards are generally based on the mentally ill person's need for treatment, rather than on a determination of the person's dangerousness to himself or herself or to others.

The Special Committee concluded that the proposed nondangerousness standards for commitment were too broad and might result in the involuntary commitment of persons who should not be detained or treated against their will. The Special Committee also decided that other proposals adopted by the Committee would reduce the need for a new commitment standard. These Committee proposals include the limited guardianship procedure, amendments to the current third and fourth commitment standards of dangerousness, proposals related to getting people into the mental health treatment system and keeping track of them throughout the system and proposals for improving community support

programs. The Special Committee concluded that its proposals should be tried for a few years before the need for a new commitment standard is reexamined.

2. Emergency Procedures

The Special Committee heard testimony that persons authorized to initiate intervention procedures, such as emergency detention and emergency protective placement (e.g., law enforcement officers), are often reluctant to do so, due to insufficient training and fear of personal liability. The use of these procedures is also hampered by lack of coordination between service providers and law enforcement officers.

To address these training and coordination issues, the Special Committee concluded that law enforcement officers should be required to complete specific training on the standards and procedures for emergency detention and emergency protective placement and that county departments of community programs under s. 51.42, Stats., should be involved in providing some of the training. To address the liability concern, the Committee concluded that a presumption of good faith should be created for actions taken by law enforcement officers making an emergency detention.

3. Health Plan Coverage of Services

A critical issue which affects the ability of a county department of community programs to provide treatment for mentally ill persons is whether there is sufficient funding to provide those services. Persons representing county departments, and treatment providers under contract with counties, indicated that health maintenance organizations frequently refuse to cover mental health treatment if that treatment is ordered by a court. Reasons for the refusals are that the plan did not determine whether the treatment was appropriate and there was no referral from the primary provider, under the plan, to the provider who performed the services.

The Special Committee recommends that, to the extent that they would otherwise provide coverage for mental health treatment, health maintenance organizations, limited service health organizations and preferred provider plans should be required to provide coverage of mental health treatment of a plan participant who is examined, evaluated or treated pursuant to an emergency detention or a court order.

B. MAJOR PROVISIONS

The major provisions of 1987 Senate Bill 351 are as follows:

1. Commitment and Detention Standards

The Bill expands the third and fourth standards of dangerousness that apply to commitment, detention pending a final hearing and emergency detention. Current law does not permit commitment or detention under these standards, if reasonable provision for the person's protection or treatment is available in the community. Under the Bill:

a. A person may be committed or detained under these standards, if the person will not avail himself or herself of the available community services; and

b. A person may be committed or detained under these standards who receives food, shelter or other care from family members or others not associated with treatment programs, if other community protection or treatment is not available.

2. Determination of Competency to Refuse Medication

Under 1987 Senate Bill 351, upon the motion of any interested person at or after the probable cause hearing, but prior to a final commitment order, a court is required to determine whether there is probable cause to believe the individual meets all of the standards for court-ordered medication. Also, the court may make this determination upon its own motion.

To order medication under this provision, the court must find that: (a) the person is not competent to make decisions regarding medication; (b) the medication will have therapeutic value; and (c) the medication will not impair the person's ability to participate in legal proceedings. Current law permits, but does not require, a court to hold a hearing on this issue at or after the probable cause hearing.

The Bill also clarifies that a court order for medications under this provision is effective only until a final order for commitment is issued or the petition is dismissed, unless a shorter period is specified by the court.

3. Settlement Agreements

Current law provides various time periods within which probable cause and final commitment hearings must be held. If a hearing is not held within these time periods, the commitment action must be dismissed and the court loses jurisdiction over the subject of the commitment proceeding.

1987 Senate Bill 351 provides that these time limitations may be waived by the subject of a commitment proceeding or by the subject's counsel, for up to 90 days from the date of the waiver, if the subject becomes a voluntary patient under a court-approved settlement agreement reached between the subject and the counsel representing the interests of the public. The settlement agreement must include a treatment plan and the subject's compliance with the settlement agreement must be monitored by the appropriate county department designated by the court. The Bill provides a mechanism to continue the commitment proceedings, if the subject of the settlement agreement fails to comply with the terms of the treatment plan.

These provisions of the Bill are based on the negotiated settlement process currently used in Milwaukee County. The purpose of these provisions is to provide specific statutory authority and procedures for the negotiated settlement process.

4. Recommitment Evaluation

1987 Senate Bill 351 requires the department to which an individual is committed to file an evaluation of the individual, and a recommendation regarding the individual's recommitment, with the committing court, the counsel for the defendant and the counsel for the interests of the public. The filing must be made 21 days prior to the expiration of the individual's period of commitment.

The purpose of this requirement is to ensure that individuals whose commitments are expiring are evaluated to determine whether they should be recommitted.

5. Procedures Upon Transfer to a More Restrictive Treatment Facility

Under current law, a person who has been involuntarily committed to a treatment facility may be transferred between treatment facilities or transferred from a facility to a community support program. The transfer can be made only if the transfer: (a) is consistent with reasonable medical and clinical judgment; and (b) is the least restrictive treatment alternative appropriate to the patient's needs.

If the person is conditionally transferred to a less restrictive facility or to a community support program, he or she must be informed at the time of the transfer that violation of any conditions may result in specified consequences which may include transfer back to a facility which imposes greater restrictions on his or her personal freedom.

1987 Senate Bill 351 creates new procedural rights for persons who, due to an alleged violation of a condition of a transfer to less restrictive treatment, are transferred:

a. Between treatment facilities, if the transfer results in a greater restriction of personal freedom for the patient for longer than five days; or

b. From outpatient to inpatient status for longer than five days.

Under the Bill, these patients are entitled to:

a. A written statement of the reasons for the transfer and the factual basis for the transfer, within 24 hours after the transfer has occurred.

b. Notice, both oral and written, of the rights under items c to f, below, within 24 hours after the transfer has occurred.

c. An informal hearing, before a hearing officer, on the issues of: (1) whether the patient violated the conditions of a transfer to a less restrictive setting; and (2) whether the form of treatment resulting from the transfer is least restrictive of the patient's personal liberty, consistent with the treatment needs of the patient. The hearing shall be held within 10 days after the transfer, unless waived, in writing, by the patient in consultation with counsel.

d. A written statement of the hearing officer's decision setting forth the reasoning and the facts on which the decision is based.

e. The right to appeal the decision of the hearing officer to the court where the facility is located or to the court which issued the patient's commitment order. The appeal may be taken by the patient or by the DHSS or county department seeking the transfer.

f. The right to counsel provided at public expense, if the patient is indigent.

6. Services After Discharge or Transfer

Under current law, prior to his or her discharge from an inpatient facility or transfer from inpatient to outpatient status, a chronically mentally ill person must be referred to a community support program for evaluation of the need for and feasibility of: (a) the provision of community-based services; and (b) the provision of aftercare services.

The DHSS and any person, director or board authorized to discharge or transfer patients also are required to ensure that a "proper residential living arrangement" and "necessary transitionary services" are available and provided for any patient being discharged or transferred from inpatient treatment.

1987 Senate Bill 351 amends these requirements to:

a. Require the DHSS, the county department or other person having authority to transfer or discharge a chronically mentally ill patient, to assist the patient in applying for any public assistance for which he or she may qualify; and

b. Specify that a "proper living arrangement" does not include a shelter facility which provides temporary lodging for homeless individuals or families. However, these facilities may be used for short-term emergency placements of these patients for a period not to exceed 10 days.

7. Guardianship and Medication as a Protective Service

1987 Senate Bill 351 creates specific statutory provisions for the appointment of a guardian for an individual alleged to be not competent to refuse psychotropic medication. Under the Bill, an individual is "not competent to refuse psychotropic medication" if, because of chronic mental illness, he or she is incapable of expressing an understanding of: (a) the advantages and disadvantages of accepting treatment; and (b) the alternatives to accepting the particular treatment offered, after the advantages, disadvantages and alternatives have been explained to the individual.

Currently, a petition for a guardianship must state the nature of the individual's incapacity, specifying his or her incompetency or spendthrift habits. Under the Bill, additional allegations must be made and proven, if the petition for guardianship is not only for the appointment of a guardian but also for an order for psychotropic medication. These new allegations include that:

a. The individual is not competent to refuse psychotropic medication.

b. The individual is likely to respond positively to psychotropic medication.

c. As a result of the individual's failure to take medication, the individual is unable to provide for his or her own care in the community. The individual's past history is relevant to determining his or her current inability to provide for his or her own care in the community.

d. Unless protective services, including medication, are provided, the individual will incur a substantial risk of physical harm or deterioration or will present a substantial risk of physical harm to others.

e. The individual has attained the age of 18 years.

Generally, the Bill applies current guardianship procedures to the appointment of a guardian for the purpose of ordering psychotropic medication. However, the Bill also includes special provisions related to the right to remain silent during examination by a physician or psychologist; representation by counsel; requests for jury trials; hearing dates; and closed hearings.

Under the Bill, if, after a court hearing, the allegations in the petition are proven, the court must appoint a guardian to consent to or refuse psychotropic medication on behalf of the subject. The court must also order the appropriate county department to develop a treatment plan. After reviewing the plan, the court must: (1) order protective services; and (2) order the appropriate county department to ensure that the protective services, including psychotropic medication, are provided to the subject as set forth in the treatment plan.

The Bill also includes provisions for an automatic annual review, by the responsible county department, of whether the guardianship should be continued and whether any changes should be made in the treatment plan. A guardian ad litem must be appointed for the person at the time of the review. A court hearing on the continuation of the guardianship or the appropriateness of the treatment plan must be held if requested by the subject, his or her guardian, the guardian ad litem or any interested person and may be held upon the court's own motion.

8. Guardians' Standards of Performance

Under the Wisconsin Supreme Court's decision in In re Guardianship of Bose, 39 Wis. 2d 80, 158 N.W. 2d 337 (1968), guardians of the person (as distinguished from guardians of the estate) are held to a standard of care of a ward known as the "prudent person rule." 1987 Senate Bill 351 provides that a guardian of the person is immune from civil liability for acts or omissions performed in compliance with a standard of performance based on the standard articulated by the court.

Under the Bill, a guardian of the person who performs his or her duties on behalf of the ward in good faith with the degree of diligence and prudence that an ordinarily prudent person exercises in his or her own affairs, and in the ward's best interests, is immune from liability for his or her acts or omissions in performing his or her duties.

9. Emergency Detention; Standards

Under current law, law enforcement officers, or persons authorized to take a child into custody under the Children's Code, may initiate an emergency detention of an individual who the officer or person has cause to believe is: (a) mentally ill, drug dependent or developmentally disabled; and (b) dangerous under one of four standards of dangerousness.

The four standards of dangerousness for emergency detention are similar to the dangerousness standards for commitment set forth in Appendix 2.

1987 Senate Bill 351 expands the third and fourth standards of dangerousness that apply to emergency detention. Current law does not permit detention under these standards, if reasonable provision for the person's protection or treatment is available in the community. Under the Bill:

a. A person may be detained under these standards, if the person will not avail himself or herself of the available community services; and

b. A person may be detained under these standards who receives food, shelter or other care from family members or others not associated with treatment programs, if other community protection or treatment is not available.

10. Emergency Detention; Presumption of Good Faith

Under current law, any individual who takes a person into custody under the emergency detention procedure is immune from liability for actions taken in good faith.

1987 Senate Bill 351 creates a statutory presumption of good faith on the part of individuals who follow the emergency detention procedure for purposes of applying this immunity. The presumption may be overcome only by proving to a reasonable certainty that the individual did not act in good faith by evidence that is clear, satisfying and convincing (the highest burden of proof in a civil action).

11. Emergency Protective Placement Standards

Currently, a person may be taken into custody under an emergency protective placement if it appears probable that the person may suffer irreparable injury or death as a result of developmental disabilities, infirmities of aging, chronic mental illness or other like incapacities if not immediately placed. Risk of harm to others is not included as a basis for an emergency protective placement.

1987 Senate Bill 351 allows a person who presents a substantial risk of serious physical harm to others to be taken into custody under an emergency protective placement. The language added to the emergency protective placement standard by this Bill is similar to one of the current standards for permanent protective placement.

12. Training in Emergency Procedures

1987 Senate Bill 351 requires training in emergency detention and emergency protective placement procedures to be included in the preparatory training programs that law enforcement officers are required to complete.

The Bill also requires county departments of community programs to implement in-service training programs for law enforcement officers regarding emergency detention and emergency protective placement. Law enforcement agencies are required to designate at least one person within the agency to attend these in-service programs.

The Bill directs the Division of Law Enforcement Services in the Department of Justice (DOJ) to cooperate in the establishment of in-service, advanced and special courses on emergency detention and emergency protective placement procedures. This requirement may be

satisfied by cooperating with county departments of community programs in establishing the county in-service training courses that they are required to implement under the Bill.

13. Crisis Intervention Services Study

Current law requires each county department of community programs under s. 51.42 of the statutes to establish a community support program within the limits of available funds. Services provided by community support programs shall include crisis intervention services. The DHSS is required to promulgate standards for community support programs, provide technical assistance, consultation and funding for these programs and monitor the establishment and continuing operation of the programs' compliance with the DHSS's standards.

1987 Senate Bill 351 requires the DHSS to conduct a study of the implementation and continuing operation of crisis intervention services by the county departments. The study shall include an inquiry into the expenditure by counties of county, state and federal moneys for crisis intervention services; the number of persons served annually by crisis intervention services in each county; and the estimated cost, per county, of expanding crisis intervention services to meet the estimated need in that county. The Bill requires the DHSS to report its findings to the Legislature not later than January 1, 1988.

14. Coverage of Court-Ordered Services Under a Medical Plan

1987 Senate Bill 351 contains requirements that apply to an enrolled participant in a health maintenance organization, limited service health organization or preferred provider plan who is examined, evaluated or treated for a nervous or mental disorder pursuant to an emergency detention, a court order in a commitment proceeding or a court order for guardianship and protective services. For such participants, the organization or plan shall, without regard to whether there has been a referral from the primary provider, take one of the following actions:

a. If the examination, evaluation or treatment is performed by a provider who does have a provider agreement with the organization or plan covering the participant, the organization or plan shall provide the service to the participant pursuant to: (1) the terms of the health care plan covering the participant; and (2) the agreement between the organization or plan and the provider; or

b. If the examination, evaluation or treatment is performed by a provider who does not have a provider agreement with the organization or

plan covering the participant, the organization or plan shall reimburse the provider for the service to the participant. For nonemergency services, this reimbursement is not required if the organization or plan could have provided the service through its own provider arrangements. For emergency services, the organization or plan is only required to make reimbursement if the provider notifies the organization or plan of the service within specified time periods.

The organization or plan is only required to make available, or make reimbursement for, the examination, evaluation or treatment: (a) to the extent that it would have made the service available to the enrolled participant if any required referral from the primary provider had been made; and (b) if the service had been performed by a provider selected by the organization or plan.

## PART IV

## DESCRIPTION OF 1987 SENATE BILL 352

### A. BACKGROUND

Under current law, voluntary mental health treatment of a minor 14 years of age or older may be provided only with the written, informed consent of the minor and the minor's parent or guardian.

If the minor refuses to consent to voluntary treatment, the minor's parent or guardian has no recourse other than to: (1) initiate a commitment proceeding if the minor meets one of the dangerousness standards for commitment (set forth in Appendix 2 to this Report); (2) file a petition, under ch. 48, Stats., alleging that the minor is in need of protection or services; or (3) forego the treatment of the minor.

If the minor wishes to seek treatment, but the minor's parent or guardian does not agree to the treatment, to obtain treatment, the minor must: (1) file a petition, under ch. 48, Stats., seeking treatment based on a finding that he or she is in need of protection or services; or (2) forego treatment.

The Special Committee concluded that a nonadversarial process should be available to review whether the refusal of the minor or the minor's parent or guardian to provide informed consent is unreasonable. The Special Committee also concluded, however, that an informal procedure should not apply to inpatient mental health treatment or treatment that involves psychotropic medication.

### B. MAJOR PROVISIONS

1987 Senate Bill 352 provides a mechanism to review a refusal, by either a minor age 14 or older or the minor's parent or guardian, to provide informed consent for mental health treatment of the minor, other than inpatient treatment or treatment involving psychotropic medication. This review would be conducted by a mental health review officer appointed by the juvenile court in the county where the parent or guardian resides. Following the officer's review, the refusal is reviewable by the juvenile court.

The Bill sets forth the required contents of the petition for review. It also sets forth the standards for reviewing a refusal to provide informed consent. These standards are based on current standards for

reviewing the admission of a minor under the age of 14 years to an inpatient facility. The standards are as follows:

1. The informed consent of the minor or his or her parent or guardian is being unreasonably withheld;

2. The minor is in need of treatment;

3. The particular treatment sought is appropriate for the minor and is the least restrictive treatment available; and

4. The treatment would be in the best interests of the minor.

The Bill provides time limits within which notice of the hearing shall be provided and the hearing shall be held.

The Bill does not provide for the appointment of counsel upon the filing of a petition for a review hearing by the mental health review officer because this procedure is intended to be nonadversarial.

Under the Bill, a person aggrieved by the finding of the mental health review officer may request the juvenile court to review the refusal. Alternatively, a petition for court review may be filed without a prior hearing or finding by a mental health review officer, if the review officer finds that immediate court review is in the best interest of the minor.

The procedures for court review of the refusal are adversarial. The Bill requires that counsel be appointed as part of the court procedure and permits the appointment of a guardian ad litem, if necessary. Standards for review of the refusal to provide informed, written consent by the juvenile court are the same as the standards used by the mental health review officer. The decision of the court is reviewable by the Court of Appeals.

The effect of a finding, by a mental health review officer or by a juvenile court, that the informed consent of the minor or the minor's parent or guardian is being unreasonably withheld, is that the person's consent is <u>not</u> required for outpatient mental health treatment for the minor other than treatment by psychotropic medication. However, this finding does not constitute a finding that the minor is mentally ill.

## PART V

## DESCRIPTION OF 1987 SENATE BILL 353

### A. BACKGROUND

#### 1. Community Support Programs

The Special Committee discussed the current structure for funding and delivering mental health services in the state. Specifically, the Special Committee discussed whether mental health services should continue to be provided primarily under the direction of county boards or whether the DHSS should directly administer programs.

The Special Committee concluded that Wisconsin's county-based service delivery structure is better able to respond to the particular needs of the mentally ill in each part of the state than a centralized state-operated system would be. The Special Committee noted, for example, that the Public Citizen Health Research Group specifically cited the decentralized decision-making and funding system in Wisconsin as one of the reasons it ranked Wisconsin first among the states in the quality of its mental health programs {"Care of the Seriously Mentally Ill: A Rating of State Programs," by E. Fuller Torrey, M.D., and Sidney M. Wolfe, M.D., dated 1986}.

The Special Committee determined, however, that reaffirmation of Wisconsin's decentralized system did not mean that there are no deficiencies in the system or that there is no need for improvements in services. For example, the Public Citizen Health Research Group, which ranked Wisconsin number one, also concluded that the availability and excellence of community support programs throughout Wisconsin counties is uneven.

The Special Committee concluded that strong community support programs, as well as other types of community-based treatment programs, are essential to providing effective treatment for the mentally ill in the least restrictive setting possible. Community-based programs are the most appropriate treatment setting in many cases. Also, treatment in community support programs can reduce the need for more costly inpatient treatment.

The Special Committee discussed the funding levels that are needed to meet the current and projected needs for community support program services. In most counties, the total need for these services is not being met primarily because of inadequate funding. Currently, funding for community support programs is primarily derived from the community social

and mental hygiene aids (community aids) appropriation. These aids, consisting of state and federal funds, are distributed to counties by the DHSS and matched with county funds for community support programs.

Federal funding, under Medical Assistance, is also available for community support program services. However, to capture this federal funding, the DHSS would need to: (a) establish community support program standards which meet minimum federal requirements; (b) amend the state Medical Assistance plan; and (c) certify, as Medical Assistance providers, those community support programs which meet the standards. The DHSS estimates that 20 out of the current 60 community support programs do not meet the minimum federal standards for Medical Assistance providers.

The Special Committee recommends that, to capture federal Medical Assistance funds: (a) one-time state funding in the form of grants be provided to community support programs which do not currently meet the federal standards to help them come up to those standards; and (b) the DHSS be directed to promulgate standards for community support programs that meet federal requirements for reimbursement of providers under Medical Assistance and amend the state Medical Assistance plan as soon as possible.

The Special Committee concluded that, to provide a continuing incentive to counties to provide and improve community support programs and to make the greatest use of federal Medical Assistance funding for community support programs, the state should provide annual funding for community support programs using a performance-based funding formula.

In the context of improving community support programs, the Special Committee also discussed the lack of adequate training opportunities for professional staff of the programs. The Special Committee concluded that the DHSS should be directed to assist counties by developing and conducting training programs for community support program staff.

2. Guardians

The Special Committee discussed the problem counties have in recruiting and training sufficient numbers of guardians for persons determined by a court to be incompetent. The Special Committee was concerned that the creation of a new type of guardianship for court-ordered medications as a protective service, as proposed under 1987 Senate Bill 353, may further strain the short supply of guardians available in each county. The Special Committee concluded that a guardianship grant program, to fund programs similar to a model program currently operated in Milwaukee County, would be helpful in recruiting,

training, monitoring and assisting guardians for persons determined to be incompetent.

B. MAJOR PROVISIONS

1. Medical Assistance Coverage for Community Support Programs

Under current law, the DHSS is required to promulgate rules establishing standards for the provision of community support programs by county mental health departments. 1985 Wisconsin Act 27, the Biennial Budget Act, requires these rules to include standards that conform with federal standards for certification of providers of community support program services under Medical Assistance. The Budget Act further requires these rules to be submitted to the Legislative Council's Administrative Rules Clearinghouse not later than September 1, 1987.

1987 Senate Bill 353 requires the DHSS to submit any amendments to the state Medical Assistance plan which are necessary to obtain federal reimbursement under Medical Assistance for community support program services to the Federal Health Care Financing Administration not later than September 1, 1987.

Finally, the Bill requires the DHSS to begin certifying eligible community support programs for Medical Assistance reimbursement not later than January 1, 1988. This implementation date is contingent on federal approval of the certification standards and state Medical Assistance plan.

2. Grants and Aids for Community Support Programs

1987 Senate Bill 353 creates a one-time $1 million continuing appropriation for a grant program to assist county departments of community programs under s. 51.42, Stats., in developing and improving community support programs. The first priority for funding under the grant program will be for county departments that have no community support programs serving their geographical area that meet provider eligibility requirements for Medical Assistance. Grants may be awarded under this program beginning three months after publication of the act.

The Bill also creates a new annual appropriation for aids to these county departments for community support programs and includes $1 million in this appropriation for 1988-89. Beginning January 1, 1989, and each year thereafter, the DHSS is directed to allocate funds under this appropriation as follows:

a. The DHSS shall provide a base allocation of $2,500 annually for each county. This would ensure a minimum allocation to each county regardless of the county's performance under the formula for allocating the remainder of the appropriation.

b. The remainder of the annual appropriation would be allocated based on the performance of the county department in providing community support program services in each county it serves. The DHSS is to consider the following performance factors equally in distributing this portion of the appropriation:

(1) The number of chronically mentally ill persons in the county who received services from community support programs during the previous calendar year;

(2) The per capita amount expended by the county department during the previous calendar year for community support programs, compared with the average per capita county expenditures for this purpose by all counties; and

(3) The per capita amount expended by the county department during the previous calendar year for inpatient psychiatric treatment for chronically mentally ill persons, compared with the average per capita county expenditures for this purpose by all counties.

Under the above formula, higher per capita expenditures for community support programs than the average per capita expenditures by all county departments result in more funding for the county department. Higher per capita expenditures for inpatient psychiatric treatment result in less funding.

The Bill directs the DHSS to ensure that the new state funds are matched with federal Medical Assistance funds to the greatest extent possible. The Bill prohibits counties from using the new funds to supplant funds currently used for community support programs.

3. Community Support Program Staff Training

1987 Senate Bill 353 directs the DHSS to develop and conduct training programs for community support program staff.

4. Guardianship Grant Program

1987 Senate Bill 353 creates a guardianship grant program, to be administered by the DHSS, with an appropriation of $250,000 for fiscal year 1988-89. Grants would first be awarded on July 1, 1988. Under this program, the DHSS shall award grants to county agencies and private, nonprofit agencies for recruiting, training, monitoring and assisting guardians for persons determined to be incompetent under ch. 880, Stats.

## PART VI

## DESCRIPTION OF 1987 ASSEMBLY BILL 680

### A. BACKGROUND

#### 1. Jail Standards; Jail Officer Training; Office of Jails

Under current law, the DHSS does not have authority to set program requirements for jails. There are no state standards on screening jail inmates for mental health problems or standards for mental health services provided to jail inmates. Also, there is no requirement that jails have any policies or procedures regarding mental health screening or services.

Currently, jail officers receive limited training regarding the needs of jail inmates who may have mental health problems. Approximately eight of the required 80 hours of preparatory jail officer training is devoted to the care and supervision of "special needs" inmates (inmates who may be emotionally distressed, mentally ill, suicidal or developmentally disabled).

The Advisory Committee on Mentally Ill Inmates concluded that there is a need for each jail to have written policies and procedures, including policies and procedures for: (a) screening inmates for mental health and other problems; and (b) providing services, including crisis intervention services, to these inmates. The Advisory Committee also concluded that jail officers need additional training in screening and dealing with inmates with mental health or other problems and that state involvement in the training is necessary to ensure that training occurs. In addition, the Advisory Committee found that facilities and programs need to be developed for long-term jail inmates.

The Advisory Committee determined that the development of jail policies and procedures should be required but that policies and procedures should be prepared separately by each jail to reflect the unique characteristics of each jail and the nonjail services and programs available to the jail locally.

Finally, the Advisory Committee believed that the DHSS's DOC should provide technical assistance to jails in developing sound policies and procedures. The Advisory Committee concluded that the establishment of an office of jails in the DOC would provide a focal point for assisting counties and for monitoring compliance with program standards.

2. Commitment Standards for Prison and Jail Inmates

Generally, under current law, a person may be committed if he or she is mentally ill, drug dependent or developmentally disabled; a proper subject for treatment; and dangerous to self or others under at least one of four standards of dangerousness (see Appendix 2). However, due to the problem of proving current or recent dangerous behavior of persons who are confined to correctional institutions, an alternative standard has been developed for inmates of state prisons. Under the alternative standard, a showing of dangerousness is not required. A state prison inmate may be committed if he or she is mentally ill, a proper subject for treatment and in need of treatment.

Current law also includes requirements for the use of the alternative standard for state prison inmates relating to attempting to use less restrictive forms of treatment and ensuring that the inmate has been fully informed about his or her treatment needs and rights and the mental health services available to him or her. As a further protection, under current law, the DHSS is required to promulgate rules establishing standards for the use of psychotropic drugs on state prison inmates committed under the alternative standard.

Commitments of state prison inmates under the alternative standard may be for a total period not to exceed 180 days in any 365-day period. In no case may the commitment continue beyond the inmate's date of release under the criminal sentence.

The alternative standard was scheduled to "sunset" on July 1, 1987 or the effective date of the 1987-89 Biennial Budget Act, whichever is later. 1987 Wisconsin Act 27, the Biennial Budget Act, changed the sunset date from July 1, 1987 to July 1, 1989.

The Advisory Committee learned that, typically, there are no more than five prisoners who have been involuntarily committed under the alternative standard at any given time. The Advisory Committee concluded that the standard has worked well to serve the needs of this small group of inmates and has not been abused. Therefore, the Advisory Committee recommends that the sunset date be repealed.

In addition, the Advisory Committee found that there are similar problems in proving the dangerousness of inmates who have been sentenced to jail and concluded that the alternative standard should also apply to these jail inmates. However, the Advisory Committee also believed that safeguards, similar to those imposed on the use of this standard for state prison inmates, should be imposed on its use for inmates sentenced to jail. Finally, to provide for legislative review of the use, and any possible abuse, of the alternative standard for jail inmates, the Advisory

Committee concluded that a "sunset" date of July 1, 1991 (or the effective date of the 1991-93 Biennial Budget Act, whichever is later) should apply to the standard for jail inmates.

3. Initiating Emergency Detention Proceedings

Under current law, an emergency detention may be initiated only by a law enforcement officer or, in the case of a child, by a person authorized to take a child into custody under ch. 48, Stats., the Children's Code.

The officer's or person's belief that the person meets the standards for emergency detention must be based on a specific recent act, attempt or threat to act or an omission made by the person and either observed by or reliably reported to the officer.

The Special Committee on Mental Health Issues discussed the issue of whether a court should be authorized to order a person who is on parole or probation to be taken to a mental health facility, rather than to jail, when a condition of probation or parole relating to taking medications is violated. During that discussion, the Special Committee also briefly discussed the question of whether the authority to initiate an emergency detention should be extended to probation and parole officers, and the Chairperson referred the issue to the Advisory Committee on Mentally Ill Inmates for its recommendation.

Following its review, the Advisory Committee concluded that the emergency detention authorization should be extended to probation and parole officers and recommended such a proposal to the Special Committee. After its review of the Advisory Committee's recommendation, the Special Committee concluded that, rather than creating this authorization, the statutory provision relating to initiating emergency detention should be amended to emphasize that information observed and reliably reported to a law enforcement officer by a probation and parole officer may be the basis of an emergency detention by the officer.

4. Criminally Committed Persons

Under current law, if a defendant in a criminal action pleads, and is found by the court to be, not guilty of a crime by reason of mental disease or defect, the defendant is not convicted of the crime or sentenced. Instead, the defendant is automatically committed to the DHSS for custody, care and treatment under a "criminal commitment."

The DHSS may not hold the person under a criminal commitment beyond the maximum period for which the person could have been imprisoned if

convicted of the offense charged, minus the credit earned for good time under ss. 53.11 and 973.155, Stats. If a person is held under criminal commitment for this maximum period, the DHSS has no authority to supervise the person for an additional period upon discharge. However, the DHSS or other interested parties may petition for the civil commitment of the person when he or she is discharged.

During the criminal commitment period, the court ordering the commitment may discharge the person or conditionally release the person, if it finds that he or she can be released from the treatment facility without posing a danger to himself or herself or to others. Also, the DHSS, upon the recommendation of the director of the treatment facility, may authorize the conditional release of the person, subject to supervision, without an order from the court, if the court does not object within 60 days of being notified of the pending conditional release.

The authority of a court to revoke a conditional release and order the person to be recommitted to the DHSS, for transfer to a mental health treatment facility, and the authority of the DHSS to supervise a person under a conditional release is limited. The revocation and supervision authority extends only for five years after the date of the conditional release or for the maximum period for which the person could have been imprisoned if convicted, minus any credit for good time under ss. 53.11 and 973.155, Stats., whichever period is shorter.

The Advisory Committee concluded that five years is not a sufficient period of supervision for some persons found not guilty of serious crimes by reason of mental disease or defect. The Advisory Committee noted that the lack of supervision of some of these persons is a matter of reasonable concern on the part of the public. Also, a longer period of supervision may cause courts and the DHSS to be willing to release some persons who are able to do well in the community with supervision but who are currently not being released due to the five-year limit on supervision.

## B. MAJOR PROVISIONS

### 1. Jail Standards

1987 Assembly Bill 680 requires the DHSS to establish program standards, by rule, for jails (including municipal lock-ups) and houses of correction. In developing the standards, the DHSS shall consult with the DOJ.

Under the Bill, the standards shall include requirements that each jail or house of correction: (a) develop a written policy and procedure manual which reflects the jail's or house of correction's unique

characteristics; and (b) have crisis intervention services available, 24 hours per day, for medical illnesses or disabilities, mental illnesses, developmental disabilities and alcohol or other drug abuse problems.

The policy and procedure manual shall: (a) include policies and procedures for screening inmates for medical illnesses or disabilities, mental illnesses, developmental disabilities and alcohol or other drug abuse; and (b) specify the facilities and programs, including outside facilities and programs, that will be provided for long-term inmates.

Under the Bill, each jail or house of correction shall submit a policy and procedure manual to the DHSS for approval no later than January 1, 1989. Subsequent substantive changes in the manual shall also be submitted to the DHSS for approval.

2. Jail Officer Training

Under current law, no person may be appointed to a permanent position as a jail officer, on or after July 2, 1983, unless the person has completed a preparatory program of at least 80 hours of jail officer training. Approximately eight of the current 80 hours of required training are devoted to the care and supervision of "special needs" inmates (inmates who may be emotionally distressed, mentally ill, suicidal, developmentally disabled or alcohol or drug abusers).

Recently, curriculum for a competency-based instruction program for jail officers has been developed. This course is designed for 110 to 120 hours of preparatory jail officer training. Approximately 10 to 12 hours of the 110 to 120 hours would be devoted to the care and supervision of "special needs" inmates.

1987 Assembly Bill 680 increases the required number of hours of preparatory jail officer training from 80 hours to 120 hours, effective June 30, 1988. The Bill also specifically requires that, effective June 30, 1988, at least 16 of the 120 hours of preparatory training shall be devoted to methods of supervision of "special needs" inmates, including those who may be emotionally distressed, mentally ill, suicidal, developmentally disabled or alcohol or drug abusers.

The Bill requires jail officers appointed prior to July 2, 1983, who have not completed the 80-hour program, to complete the 120-hour preparatory training program by June 30, 1993. Jail officers who satisfactorily completed the 80-hour preparatory training program (whether appointed prior to or after July 2, 1983) are also required to complete the 120-hour program. However, jail officers who have completed the 80-hour program may fulfill the 120-hour requirement by completing a

40-hour training program approved by the Law Enforcement Standards Board. At least 16 hours of the 40-hour program shall be devoted to methods of supervision of special inmates.

As a preliminary estimate, the DOJ has indicated that the increased costs of training new officers under the proposed 120-hour, rather than the current 80-hour, requirement will be approximately $100,000 per year (250 officers x $425 per officer). The estimated cost of requiring current officers who have received no training to complete 120 hours of training will be approximately $450,000 over the next five years (350 officers x $1,275 per officer). The estimated cost of requiring current officers to complete an additional 40 hours of training will be approximately $275,000 over the next five years (655 officers x $425 per officer).

Assuming that the costs for training current officers who have received no training or have received 80 hours of training can be spread out evenly over the next five years, the estimated total increased training costs per year under the Bill would be $245,000 per year over the next five years. It is not known, at this time, whether these amounts can be funded entirely from the current program revenue appropriation for jail officer training which consists of criminal fines and civil forfeitures imposed by courts.

3. Office of Jails

1987 Assembly Bill 680 directs the DHSS to establish a subunit on jails (e.g., an office of jails) in the DOC. Under the Bill, the DHSS would transfer to the new office of jails responsibilities of the DOC related to jails and houses of correction, including: (a) the responsibilities, under current law, for supervising and inspecting jails and houses of correction and approving their construction plans; and (b) the responsibilities, created by the Bill, for establishing program standards for jails and houses of correction and approving their policy and procedure manuals.

The Bill increases an appropriation to the DHSS by $51,800 in general purpose revenues in 1987-88 and 1988-89 to fund a 1.0 full-time equivalent administrative officer position and 0.5 full-time equivalent program assistant (clerical) position in the new office of jails.

It is anticipated that, once the office of jails is established, it will develop a budget request to fund technical assistance to jails.

4. Alternative Commitment Standard for State Prison Inmates

As described under A, 2, above, an alternative commitment standard applies to state prison inmates. Under this standard, a state prison inmate may be committed if he or she is mentally ill, a proper subject for treatment and in need of treatment. A finding of dangerousness is not required.

1987 Assembly Bill 680 repeals the July 1, 1989 "sunset" provision which currently applies to the alternative commitment standard for state prison inmates. Thus, the alternative standard will continue in effect unless the Legislature takes affirmative action to repeal or otherwise change the standard.

5. Alternative Commitment Standard for Jail Inmates

1987 Assembly Bill 680 creates an alternative standard for the commitment of inmates of county jails and houses of correction who are under criminal sentence. The newly-created commitment standard is identical to the alternative standard currently applicable to state prison inmates. Under the new standard, a petition for the commitment of a county jail or house of correction inmate shall allege that the inmate is mentally ill, a proper subject for treatment and in need of treatment.

As for state prison inmates, prior to filing a petition for the commitment of a jail inmate under the alternative standard, the sheriff or other jail or house of correction administrator is required to:

a. Attempt to use less-restrictive forms of treatment;

b. Ensure that the individual has been fully informed about his or her treatment needs, the mental health services available to him or her and his or her rights; and

c. Ensure that the inmate has had an opportunity to discuss, with a licensed physician or a licensed psychologist, his or her needs, the services available and his or her rights.

As for state prison inmates, a commitment of a jail inmate under the alternative standard may be for a total period not to exceed 180 days in any 365-day period and in no case may the commitment continue beyond the inmate's date of release under the criminal sentence.

The Bill creates a "sunset" date for the alternative standard for jail inmates of July 1, 1991.

6. Reports on Mental Health Treatment of Jail Inmates

1987 Assembly Bill 680 requires the sheriff or other keeper of a jail or house of correction to report, annually, to the DHSS, on:

a. The number of jail inmates who were transferred to a state or county treatment facility during the previous year under a commitment, an emergency transfer or voluntarily; and the length of stay of each prisoner in the treatment facility;

b. The number of inmates who were committed during the previous year to outpatient treatment under the new alternative standard and who were treated in the jail with psychotropic medication, as well as each inmate's diagnosis and types of drugs used; and

c. A description of the mental health services available to inmates on either a voluntary or involuntary basis.

7. Standards for Involuntary Use of Drugs on Jail Inmates

1987 Assembly Bill 680 requires the DHSS to establish standards and procedures for the use of, and periodic review of the use of, psychotropic medication on inmates in a county jail or house of correction who are being involuntarily treated in the jail or house of correction under either the newly-created alternative commitment standard or the current commitment standards.

8. Criminally Committed Persons

As described under A, 4, above, if a defendant in a criminal action is found not guilty by reason of mental disease or defect, he or she is committed to the DHSS under a "criminal commitment." If the person is then conditionally released from the commitment, the maximum time period during which the court may revoke the conditional release or the DHSS may supervise the person is the shorter of: (a) five years after the date of the conditional release; or (b) the maximum period for which the person could have been imprisoned, if convicted, minus any credit for good time under ss. 53.11 and 973.155, Stats.

1987 Assembly Bill 680 extends the time period during which a court may revoke the conditional release and recommit the person to the maximum period for which the defendant could have been imprisoned, if convicted, minus any credit for good time under s. 53.11 or 973.155. The extension of this revocation period also has the incidental effect of extending the time period during which the DHSS may supervise persons who have been

conditionally released to the maximum period for which the defendant could have been imprisoned, if convicted, minus any credit for good time under ss. 53.11 and 973.155.

PR:kja:wf;jc

## APPENDIX 1

## COMMITTEE VOTES ON APPROVAL OF RECOMMENDATIONS

APPENDIX 1

## COMMITTEE VOTES ON

## APPROVAL OF RECOMMENDATIONS

This Appendix lists the votes of the Special Committee on Mental Health Issues and, where applicable, the votes of the Advisory Committee on Mentally Ill Inmates on each of the 22 separate drafts which were combined into the four drafts recommended to the Legislative Council.

A. 1987 SENATE BILL 351, RELATING TO COMMITMENT STANDARDS AND PROCEDURES FOR AND ALTERNATIVES TO COMMITMENT, combines 13 bill drafts approved by the Special Committee. The Special Committee's votes on each of the drafts are shown below.

1. WLCS: 219/4, relating to guardianship and authorization of court-ordered medications as a protective service

At its April 8, 1987 meeting, the Special Committee amended WLCS: 219/3 and approved the draft, as amended, for recommendation to the Legislative Council by a vote of Ayes, 17 (Risser, Medinger, Notestein, Rude, Gruszynski, Ourada, Rosenzweig, Engeleiter, Easterday, Greenley, Jackson, Koppa, McKnight, Meyer, Otte, Pekowsky and Pledl); Noes, 0; Absent, 3 (Gleason, Libman and Vander Zyl); and Not Voting, 0.

The amendments to WLCS: 219/3, adopted at the April 8, 1987 meeting, were then incorporated into WLCS: 219/4. At its May 1, 1987 meeting, the Committee reviewed WLCS: 219/4 and amended the draft as previously approved, by unanimous consent.

2. WLCS: 408/1, relating to providing an exemption from civil liability for guardians

At its May 1, 1987 meeting, the Special Committee amended WLCS: 408/1 and approved the draft, as amended, for recommendation to the Legislative Council by unanimous consent.

3. WLCS: 232/2, relating to the effects of care provided by persons other than treatment facilities under the standards for commitment and emergency detention

At its April 8, 1987 meeting, the Special Committee approved WLCS: 232/2 for recommendation to the Legislative Council by a vote of Ayes, 13 (Risser, Medinger, Notestein, Gruszynski, Ourada, Engeleiter, Greenley, Jackson, Koppa, Meyer, Otte, Pekowsky and Pledl); Noes, 0; Absent, 7 (Rude, Rosenzweig, Easterday, Gleason, Libman, McKnight and Vander Zyl); and Not Voting, 0.

At its May 1, 1987 meeting, the Special Committee amended the draft, as previously approved, to incorporate an initial applicability provision, by unanimous consent.

4. WLCS: 244/2, relating to the evaluation of persons who have been committed and recommendations for recommitment

At its April 8, 1987 meeting, the Special Committee approved WLCS: 244/2 for recommendation to the Legislative Council by a vote of Ayes, 13 (Risser, Medinger, Notestein, Gruszynski, Ourada, Engeleiter, Greenley, Jackson, Koppa, Meyer, Otte, Pekowsky and Pledl); Noes, 0; Absent, 7 (Rude, Rosenzweig, Easterday, Gleason, Libman, McKnight and Vander Zyl); and Not Voting, 0.

At its May 1, 1987 meeting, the Special Committee amended the draft, as previously approved, to incorporate an initial applicability provision, by unanimous consent.

5. WLCS: 162/2, relating to incompetency to refuse medications pending a final hearing in a commitment proceeding

At its March 23, 1987 meeting, the Special Committee approved WLCS: 162/2 for recommendation to the Legislative Council by a vote of Ayes, 16 (Risser, Notestein, Gruszynski, Ourada, Rosenzweig, Engeleiter, Easterday, Greenley, Jackson, Koppa, McKnight, Meyer, Otte, Pekowsky, Pledl and Vander Zyl); Noes, 0; Absent, 4 (Medinger, Rude, Gleason and Libman); and Not Voting, 0.

At its May 1, 1987 meeting, the Special Committee amended the draft, as previously approved, to incorporate an initial applicability provision, by unanimous consent.

6. WLCS: 191/2, relating to negotiated settlements

At its March 23, 1987 meeting, the Special Committee amended WLCS: 191/1 and approved the draft, as amended, for recommendation to the Legislative Council by a vote of Ayes, 15 (Risser, Medinger, Notestein, Gruszynski, Ourada, Easterday, Greenley, Jackson, Koppa, McKnight, Meyer, Otte, Pekowsky, Pledl and Vander Zyl); Noes, 0; Absent, 5 (Rude, Rosenzweig, Engeleiter, Gleason and Libman); and Not Voting, 0.

The amendments to WLCS: 191/1, adopted by the Committee at the March 23, 1987 meeting, were then incorporated into WLCS: 191/2. At its May 1, 1987 meeting, the Committee reviewed WLCS: 191/2 and amended the draft, as previously approved, by unanimous consent.

7. WLCS: 301/3, relating to discharges of persons with chronic mental illness from an inpatient facility

At its April 8, 1987 meeting, the Special Committee amended WLCS: 301/2 and approved the draft, as amended, for recommendation to the Legislative Council by unanimous consent.

The amendments to WLCS: 301/2, adopted by the Committee at the April 8, 1987 meeting, were then incorporated into WLCS: 301/3. At its May 1, 1987 meeting, the Special Committee reviewed WLCS: 301/3 and amended the draft, as previously approved, by unanimous consent.

8. WLCS: 228/3, relating to requiring a hearing prior to the transfer of involuntarily committed persons to a more restrictive treatment setting

At its March 23, 1987 meeting, the Special Committee amended WLCS: 228/2 and approved the draft, as amended, for recommendation to the Legislative Council by a vote of Ayes, 15 (Risser, Medinger, Notestein, Ourada, Rosenzweig, Easterday, Greenley, Jackson, Koppa, McKnight, Meyer, Otte, Pekowsky, Pledl and Vander Zyl); Noes, 0; Absent, 5 (Rude, Gruszynski, Engeleiter, Gleason and Libman); and Not Voting, 0.

The amendments to WLCS: 228/2, adopted by the Committee at the March 23, 1987 meeting, were then incorporated into WLCS: 228/3. At its May 1, 1987 meeting, the Committee reviewed WLCS: 228/3 and made no further changes in the draft.

9. WLCS: 411/1, relating to coverage by health maintenance organizations, limited service organizations and preferred provider plans of examinations, evaluations and treatment of an enrolled participant who is a subject of an emergency detention, commitment proceeding or a limited guardianship and court order for psychotropic medications

At its May 1, 1987 meeting, the Special Committee amended WLCS: 411/1 and approved the draft, as amended, for recommendation to the Legislative Council by unanimous consent.

10. WLCS: 152/1, relating to a presumption of the good faith of individuals initiating emergency detentions

At its December 22, 1986 meeting, the Special Committee approved WLCS: 152/1 for recommendation to the Legislative Council by a voice vote, with Mr. Pledl voting no.

At its May 1, 1987 meeting, the Committee amended the draft, as previously approved, to include an initial applicability provision, by unanimous consent.

11. WLCS: 233/2, relating to training for law enforcement officers in emergency detention and emergency protective placement procedures

At its March 23, 1987 meeting, the Special Committee amended WLCS: 233/1 and approved the draft, as amended, for recommendation to the Legislative Council by a vote of Ayes, 15 (Risser, Notestein, Gruszynski, Rosenzweig, Engeleiter, Easterday, Greenley, Jackson, Koppa, McKnight, Meyer, Otte, Pekowsky, Pledl and Vander Zyl); Noes, 0; Absent, 5 (Medinger, Rude, Ourada, Gleason and Libman); and Not Voting, 0.

The amendments adopted by the Committee at its March 23, 1987 meeting were then incorporated into WLCS: 233/2. At its August 1, 1987 meeting, the Committee reviewed WLCS: 233/2 and amended the draft, as previously approved, by unanimous consent.

12. WLCS: 187/2, relating to standards for emergency protective placements

At its March 23, 1987 meeting, the Special Committee amended WLCS: 187/1 and approved the draft, as amended, for recommendation to the Legislative Council by a vote of Ayes, 15 (Risser, Medinger, Notestein, Ourada, Rosenzweig, Easterday, Greenley, Jackson, Koppa, McKnight, Meyer,

Otte, Pekowsky, Pledl and Vander Zyl); Noes, 0; Absent, 5 (Rude, Gruszynski, Engeleiter, Gleason and Libman); and Not Voting, 0.

The amendments to the draft, adopted by the Committee at its March 23, 1987 meeting, were then incorporated into WLCS: 187/2. At its May 1, 1987 meeting, the Committee amended WLCS: 187/2, as previously approved, to incorporate an initial applicability provision, by unanimous consent.

13. WLCS: 407/1, relating to requiring the department of health and social services to study the implementation of crisis intervention services by counties

At its August 1, 1987 meeting, the Special Committee approved WLCS: 407/1 for recommendation to the Legislative Council by unanimous consent.

B. 1987 SENATE BILL 352, RELATING TO OUTPATIENT MENTAL HEALTH TREATMENT OF MINORS 14 YEARS OF AGE OR OLDER, contains a single bill draft as approved by the Special Committee.

At its May 1, 1987 meeting, the Special Committee on Mental Health Issues amended WLCS: 410/1 and approved the draft, as amended, for recommendation to the Legislative Council by unanimous consent. The amendments adopted by the Committee have been incorporated into WLCS: 410/2.

C. 1987 SENATE BILL 353, RELATING TO LOCAL ASSISTANCE FOR COMMUNITY SUPPORT PROGRAMS AND GUARDIANSHIP GRANTS, combines four bill drafts approved by the Special Committee. The Special Committee's votes on each of the four drafts are shown below.

1. WLCS: 414/1, relating to aids and grants for community support programs

At its May 1, 1987 meeting, the Special Committee amended WLCS: 414/1 and approved the draft, as amended, for recommendation to the Legislative Council by unanimous consent.

2. WLCS: 415/1, relating to medical assistance coverage for community support programs

At its May 1, 1987 meeting, the Special Committee amended WLCS: 415/1 and approved the draft, as amended, for recommendation to the Legislative Council by unanimous consent.

3. WLCS: 392/1, relating to training programs for community support program staff

At its May 1, 1987 meeting, the Special Committee amended WLCS: 392/1 and approved the draft, as amended, for recommendation to the Legislative Council by unanimous consent.

4. WLCS: 391/1, relating to creating a guardianship grant program

At its May 1, 1987 meeting, the Special Committee amended WLCS: 391/1 and approved the draft, as amended, for recommendation to the Legislative Council by unanimous consent.

D. 1987 ASSEMBLY BILL 680, RELATING TO SERVICES TO AND COMMITMENTS OF MENTALLY ILL INMATES AND CRIMINALLY COMMITTED PERSONS, combines four bill drafts recommended to the Special Committee by the Advisory Committee on Mentally Ill Inmates and approved by the Special Committee. The votes of the Advisory Committee and the Special Committee on each of the four drafts are shown below.

1. WLCS: 234/1, relating to program standards for jails and houses of correction, creating a subunit on jails in the department of health and social services and jail officer training

a. Advisory Committee Action

WLCS: 234/1 was recommended to the Special Committee on Mental Health Issues by the Advisory Committee on Mentally Ill Inmates. The draft incorporated the following three separate drafts approved by the Advisory Committee at its January 23, 1987 meeting:

(1) WLCS: 201/1, relating to program standards for jails and houses of correction, which was approved, as amended, by the Advisory Committee on a vote of Ayes, 9 (Medinger, Becker, Beckman, Carr, Dresen, McCarthy, Otte, Perez and Young); Noes, 1 (Buettner); Absent, 3 (Zeuske, Schroeder and Tucker); and Not Voting, 0.

(2) WLCS: 203/1, relating to creating a subunit on jails in the department of health and social services, which was approved, as amended, by the Advisory Committee on a vote of Ayes, 9 (Medinger, Becker, Beckman, Carr, Dresen, McCarthy, Otte, Perez and Young); Noes, 0; Absent, 4 (Buettner, Zeuske, Schroeder and Tucker); and Not Voting, 0.

(3) WLCS: 195/1, relating to jail officer training, which was approved, as amended, by the Advisory Committee on a vote of Ayes, 10 (Medinger, Becker, Buettner, Beckman, Carr, Dresen, McCarthy, Otte, Perez and Young); Noes, 0; Absent, 3 (Zeuske, Schroeder and Tucker); and Not Voting, 0.

b. Special Committee Action

At its February 17, 1987 meeting, the Special Committee on Mental Health Issues approved WLCS: 234/1 for recommendation to the Legislative Council by a vote of Ayes, 16 (Risser, Medinger, Notestein, Ourada, Easterday, Gleason, Greenley, Jackson, Koppa, Libman, McKnight, Meyer, Otte, Pekowsky, Pledl and Vander Zyl); Noes, 0; Absent, 4 (Rude, Gruszynski, Rosenzweig and Engeleiter); and Not Voting, 0.

2. WLCS: 204/2, relating to commitment standards and procedures for inmates of prisons, county jails and houses of correction

a. Advisory Committee Action

At its January 23, 1987 meeting, the Advisory Committee on Mentally Ill Inmates approved WLCS: 204/2 for recommendation to the Special Committee on Mental Health Issues by a vote of Ayes, 9 (Medinger, Becker, Beckman, Carr, Dresen, McCarthy, Otte, Perez and Young); Noes, 1 (Buettner); Absent, 3 (Zeuske, Schroeder and Tucker); and Not Voting, 0.

b. Special Committee Action

At its February 17, 1987 meeting, the Special Committee on Mental Health Issues approved WLCS: 204/2 for recommendation to the Legislative Council by a vote of Ayes, 10 (Risser, Medinger, Ourada, Rosenzweig, Gleason, Jackson, Libman, McKnight, Otte and Vander Zyl); Noes, 7 (Notestein, Easterday, Greenley, Koppa, Meyer, Pekowsky and Pledl); Absent, 3 (Rude, Gruszynski and Engeleiter); and Not Voting, 0.

At its May 1, 1987 meeting, the Special Committee amended WLCS: 204/2, as previously approved, to incorporate an initial applicability provision, by unanimous consent.

3. WLCS: 199/3, relating to the authority of a law enforcement officer or other person to initiate an emergency detention based on information reliably reported by a probation and parole agent

a. Advisory Committee Action

At its January 23, 1987 meeting, the Advisory Committee on Mentally Ill Inmates approved WLCS: 199/2 for recommendation to the Special Committee by a vote of Ayes, 10 (Medinger, Becker, Buettner, Carr, Dresen, McCarthy, Otte, Perez, Schroeder and Young); Noes, 1 (Beckman); Absent, 2 (Zeuske and Tucker); and Not Voting, 0.

b. Special Committee Action

At its February 17, 1987 meeting, the Special Committee on Mental Health Issues amended WLCS: 199/2. The amendment was then incorporated into WLCS: 199/3.

At its March 23, 1987 meeting, the Special Committee approved WLCS: 199/3 for recommendation to the Legislative Council by a vote of Ayes, 16 (Risser, Notestein, Gruszynski, Ourada, Rosenzweig, Engeleiter, Easterday, Greenley, Jackson, Koppa, McKnight, Meyer, Otte, Pekowsky, Pledl and Vander Zyl); Noes, 0; Absent, 4 (Medinger, Rude, Gleason and Libman); and Not Voting, 0.

At its May 1, 1987 meeting, the Committee amended WLCS: 199/3, as previously approved, to incorporate an initial applicability provision, by unanimous consent.

4. WLCS: 202/2, relating to supervision of persons committed under the not guilty by reason of mental disease or defect offense and conditionally released

a. Advisory Committee Action

At its January 23, 1987 meeting, the Advisory Committee on Mentally Ill Inmates approved WLCS: 202/2 for recommendation to the Special Committee on Mental Health Issues by a vote of Ayes, 11 (Medinger, Becker, Buettner, Beckman, Carr, Dresen, McCarthy, Otte, Perez, Schroeder and Young); Noes, 0; Absent, 2 (Zeuske and Tucker); and Not Voting, 0.

b. Special Committee Action

At its February 17, 1987 meeting, the Special Committee on Mental Health Issues approved WLCS: 202/2 for recommendation to the Legislative Council by a vote of Ayes, 14 (Risser, Medinger, Notestein, Ourada,

Rosenzweig, Easterday, Gleason, Jackson, Koppa, McKnight, Meyer, Otte, Pekowsky and Vander Zyl); Noes, 2 (Greenley and Pledl); Absent, 3 (Rude, Gruszynski and Engeleiter); and Not Voting, 1 (Libman).

At its May 1, 1987 meeting, the Committee amended WLCS: 202/2, as previously approved, to incorporate an initial applicability provision, by unanimous consent.

## APPENDIX 2

## CURRENT COMMITMENT STANDARDS

APPENDIX 2

## CURRENT COMMITMENT STANDARDS

Under s. 51.20 (1) (a), Stats., an individual may be committed if he or she:

1. Is mentally ill, drug dependent, or developmentally disabled and is a proper subject for treatment; and

2. Is dangerous because the individual:

a. Evidences a substantial probability of physical harm to himself or herself as manifested by evidence of recent threats of or attempts at suicide or serious bodily harm;

b. Evidences a substantial probability of physical harm to other individuals as manifested by evidence of recent homicidal or other violent behavior, or by evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent overt act, attempt or threat to do serious physical harm. In this subparagraph, if the petition is filed under a court order under s. 48.30 (5) (c) 1, a finding by the court exercising jurisdiction under ch. 48 that the child committed the act or acts alleged in the petition under s. 48.12 or 48.13 (12) may be used to prove that the child exhibited recent homicidal or other violent behavior or committed a recent overt act, attempt or threat to do serious physical harm;

c. Evidences such impaired judgment, manifested by evidence of a pattern of recent acts or omissions, that there is a substantial probability of physical impairment or injury to himself or herself. The probability of physical impairment or injury is not substantial under this subparagraph if reasonable provision for the subject individual's protection is available in the community, if the individual is appropriate for placement under s. 55.06 or, in the

case of a minor, if the individual is appropriate for services or placement under s. 48.13 (4) or (11). The subject individual's status as a minor does not automatically establish a substantial probability of physical impairment or injury under this subparagraph; or

d. Evidences behavior manifested by recent acts or omissions that, due to mental illness, he or she is unable to satisfy basic needs for nourishment, medical care, shelter or safety without prompt and adequate treatment so that a substantial probability exists that death, serious physical injury, serious physical debilitation or serious physical disease will imminently ensue unless the individual receives prompt and adequate treatment for this mental illness. No substantial probability of harm under this subparagraph exists if reasonable provision for the individual's treatment and protection is available in the community, if the individual can receive protective placement under s. 55.06 or, in the case of a minor, if the individual is appropriate for services or placement under s. 48.13 (4) or (11). The individual's status as a minor does not automatically establish a substantial probability of death, serious physical injury, serious physical debilitation or serious disease under this subparagraph.

# APPENDIX 3

## COMMITTEE MATERIALS:

## SPECIAL COMMITTEE ON MENTAL HEALTH ISSUES

APPENDIX 3

COMMITTEE MATERIALS:

SPECIAL COMMITTEE ON MENTAL HEALTH ISSUES

STAFF MATERIALS

1. MEMO NO. 1, State Budget Process (July 15, 1986).

2. Staff Brief 86-7, The Legal Framework for Care and Treatment of the Mentally Ill (July 16, 1986).

3. Staff Brief 86-8, Mental Health Services in Wisconsin (July 16, 1986).

4. MEMO NO. 2, Summary of Selected Studies of Mental Health Issues; Related Materials (September 10, 1986).

5. Information Memorandum 86-21, Standards for Outpatient Commitment: A Comparison of State Laws (September 10, 1986).

6. MEMO NO. 3, Program of Assertive Community Treatment: Expenditures and Revenue Sources (September 15, 1986).

7. MEMO NO. 4, Regulation of Care of the Mentally Ill in Nursing Homes in Wisconsin (September 15, 1986).

8. MEMO NO. 5, Numbers of Patients in State Mental Health Institutes and County-Operated Psychiatric Facilities in Wisconsin Between 1965 and 1974 (September 15, 1986).

9. MEMO NO. 6, Interstate Comparisons of Expenditures and Revenue Sources for State Mental Health Services (September 15, 1986).

10. MEMO NO. 7, Commentary on the Washington Civil Commitment Study (October 30, 1986).

11. MEMO NO. 8, Use of the Limited Guardianship Procedure in Dane County (November 4, 1986).

12. Discussion Paper 86-4, Possible Changes in the Laws Relating to Court-Ordered Involuntary Treatment of the Mentally Ill (November 4, 1986).

13. MEMO NO. 9, Community Support Program Administrative Rules (October 30, 1986).

14. MEMO NO. 10, State Standards Governing Mental Health Programs and Services (November 4, 1986).

15. MEMO NO. 11, Recent Wisconsin Court of Appeals Ruling on Right to Refuse Psychotropic Drugs (December 15, 1986).

16. MEMO NO. 12, Relationship Between Dane County Law Enforcement and Mental Health Agencies in Emergency Detentions (December 12, 1986).

17. MEMO NO. 13, Alternative Drafts (WLCS: 162/1), Relating to Incompetency to Refuse Psychotropic Medications Pending a Final Commitment Hearing (December 15, 1986).

18. MEMO NO. 14, Alternative Drafts (WLCS: 138/1), Relating to Training for Persons Authorized to Initiate Emergency Detentions (December 15, 1986).

19. A memorandum, to Senator J. M. Davis, Description of WLCS: 143/3, Relating to Creating a Procedure for Ordering the Involuntary Outpatient Treatment of Mentally Ill Persons (December 15, 1986).

20. MEMO NO. 15, Outline of Issues and Alternatives for Consideration with WLCS: 143/3, Relating to Involuntary Outpatient Treatment of Mentally Ill Persons (December 17, 1986).

21. MEMO NO. 16, Description of Selected States' Commitment Standards (December 19, 1986).

22. MEMO NO. 17, Description of 1985 Assembly Bill 661, Relating to Creating a Standard for Involuntary Civil Commitment on an Outpatient Basis, and Assembly Substitute Amendment 1 to the Bill (January 13, 1987).

23. Discussion Paper 87-2, Questions Relating to Involuntary Outpatient Treatment Under Outpatient Commitment or Limited Guardianship (January 13, 1987).

24. MEMO NO. 18, Alternative Drafts (WLCS: 232/1), Relating to the Effect of Care Provided by Persons Other than Treatment Facilities on Commitment and Emergency Detention (February 4, 1987).

25. MEMO NO. 19, Current Requirements for Notification of Family Members and Petitioners Under the Mental Health Act (March 12, 1987).

26. MEMO NO. 20, Proposed Alternative Standards for Commitment and Emergency Detention, Introduced in the 1985-86 Legislative Session, Which Do Not Require a Finding of Dangerousness (March 31, 1987).

27. MEMO NO. 21, Selected States' Commitment Standards Which Do Not Require a Finding of Present Dangerousness (March 31, 1987).

28. MEMO NO. 22, Proposals Adopted by the Special Committee on Mental Health Issues (March 31, 1987).

29. A memorandum, to Senators Susan Engeleiter and Brian Rude, Types of Individuals Who May be Involuntarily Treated Under Proposals for Alternative Commitment Standards and for Procedures for Creating a Guardianship for the Administration of Psychotropic Medications (April 3, 1987).

30. A memorandum, to Representative Peggy Rosenzweig, Limiting the Right of Minors Ages 14 to 18 to Consent to or Refuse Mental Health Treatment (April 7, 1987).

31. MEMO NO. 23, "Insurance Reimbursement for Mental Health Services," A Report of the Texas Advisory Committee on Third-Party Payment of Costs for Mental Health and Mental Retardation Rehabilitative Services (April 23, 1987).

32. MEMO NO. 24, Exemptions from Civil Liability for Aiding Others, Duties of Guardians and WLCS: 408/1, Relating to an Exemption for Guardians (April 24, 1987).

33. MEMO NO. 25, Initial Applicability Provisions for Proposals Adopted by the Special Committee on Mental Health Issues (April 30, 1987).

OTHER MATERIALS

1. Presentation to the Annual Meeting of the Association of American Law Schools, Is Need for Treatment Constitutionally Acceptable as a Basis for Civil Commitment?, by Paul S. Appelbaum, M.D. (January 5, 1984).

2. Wisconsin Involuntary Commitment Process, Three Research Reports, prepared by the Office of Mental Health, Division of Community Services, Department of Health and Social Services (DHSS) (January 1986).

3. Wisconsin Association of Community Mental Health Centers, A Services Position Statement (February 26, 1986).

4. Chapter 51: Wisconsin Mental Health Law, prepared by the Office of Mental Health, Division of Community Services, DHSS (March 1986).

5. Address to the Legislative Council Study Group, Wisconsin's Mental Health System, by Linda Reivitz, Secretary, DHSS (July 24, 1986).

6. Letter, to Representative John Medinger, from Evelyn Link, on civil commitment standards (September 8, 1986).

7. Letter, to Representative Barbara Notestein, from Patricia J. Flannery, MSW, Executive Director, The Guest House of Milwaukee, on county resources and services for mentally ill clients (October 8, 1986).

8. Descriptive Study of Admissions to the Milwaukee County Mental Health Complex Adult Acute Hospital During 1985, by John Easterday, Assistant Administrator, Mental Health Complex, and Joan Brown, R.N., Director of Quality Assurance, Mental Health Complex (undated).

9. "No Home Port for Wanderer Adrift in City," The Milwaukee Journal (October 19, 1986).

10. Letter, from LaVerne B. Baker, on commitment standards (October 24, 1986).

11. Letter, from Fran and Dick Feuske, on commitment standards (October 28, 1986).

12. "Conflict Between Patients' Rights and Patients' Needs: An Organizational Systems Problem," by James T. Ziegenfuss, Jr., Ph.D., MPA, Hospital and Community Psychiatry, Vol. 37, No. 11 (November 1986).

13. Letter, from Don and Cathy Kreul, on commitment standards (November 7, 1986).

14. Memorandum, from Lilah and Frank Blandino, on commitment standards and community support programs (November 7, 1986).

15. Letter, from Mr. and Mrs. M. Aldworth, on commitment standards (undated).

16. Presentation to the Wisconsin Legislative Council Meeting of the Special Committee on Mental Health Issues, by James Ahasay, Executive Director, Northern Pines Unified Services Center (NPUSC), and related handouts on NPUSC (November 11, 1986).

17. Letter, from Carl F. Held, Supervisor, Mental Health Unit, Bureau of Community Corrections, DHSS, on individuals found not guilty by reason of mental disease or defect and revocation of the probation or parole of individuals convicted of crimes who are mentally ill (November 21, 1986).

18. Letter, from Lee Johnson, Director, Eau Claire County Department of Human Services, on hearings and commitment proceedings (December 12, 1986).

19. Proposed Changes in Chapter 51 Regarding Patient Commitment Standards, by Robert A. McKnight (January 20, 1987).

20. Letter, from John Easterday, Assistant Administrator, Milwaukee County Mental Health Complex, on the community versus institutional emphasis of the Complex (January 28, 1987).

21. Letter, from Robert E. Kinney, Circuit Court Judge, Oneida County, on proposed changes in ch. 51, Stats. (February 5, 1987).

22. Letter, from Floyd O. Anderson, M.D., Clinical Director, St. Croix Health Center, New Richmond, Wisconsin, on proposed changes in ch. 51, Stats., regarding patient commitment standards (February 11, 1987).

23. "Murder Trial Alleged in Psychiatric Ward," La Crosse Tribune (February 13, 1987).

24. Letter, from Eileen Hirsch, Assistant State Public Defender, on recommendations of the Advisory Committee on Mentally Ill Inmates (February 16, 1987).

25. Letter, from Carl F. Held, Supervisor, Mental Health Unit, Bureau of Community Corrections, DHSS, on recommendations of the Advisory Committee on Mentally Ill Inmates (February 16, 1987).

26. Letter, from Stephen E. Bablitch, Administrator, Division of Corrections, DHSS, on recommendations of the Advisory Committee on Mentally Ill Inmates (February 17, 1987).

27. Memorandum, from Diane Greenley, John Easterday and Paul Meyer, Improved Funding for Community Support Programs for Persons with Chronic Mental Illness (February 17, 1987).

28. Letter, from Robert Tomlinson, Mental Health Association in Eau Claire County, on commitment proceedings (February 17, 1987).

29. Bulletin, This Boy is Missing, relating to commitment standards (undated).

30. Letter, from Ron Lockwood, Director, Unified Services Board, Ashland, Iron and Price Counties, on a proposal for a commitment standard for jail inmates (March 3, 1987).

31. Letter, from H. Pearce Konold, ACSW, Executive/Program Director, Tri-County Community Board, Sauk, Juneau and Richland Counties, on proposals relating to a commitment standard for jail inmates, the role of probation and parole agents in emergency detentions and guardianship for psychotropic medications (March 4, 1987).

32. Letter, from Bruce Willet, Director, Green County Human Services, on proposals relating to a commitment standard for jail inmates, the role of probation and parole agents in emergency detentions and guardianship for psychotropic medications (March 5, 1987).

33. Letter, from Donald E. Mulry, Director, Monroe County Department of Human Services, on proposals relating to a commitment standard for jail inmates, the role of probation and parole agents in emergency detentions and limited guardianship for psychotropic medications (March 6, 1987).

34. Letter, from Patrick J. Irick, Madison, on commitment standards and mental health advocacy and informational services (March 10, 1987).

35. Letter, from Dave Sierer, Program Director, Vernon County Unified Board, on proposals relating to a commitment standard for jail inmates, the role of probation and parole agents in emergency detentions and guardianship for psychotropic medications (March 10, 1987).

36. Letter, from Joseph E. Knipp, Program Director, Waushara County Unified Services Board, on proposals relating to a commitment standard for jail inmates and the role of probation and parole agents in emergency detentions (March 11, 1987).

37. Letter, from Robert A. McKnight, Principal Assistant, Corporation Counsel, Milwaukee County, on proposals for legislation to be considered by the Special Committee (March 11, 1987).

38. Letter, from Thomas Schleitwiler, Director, Jefferson County Human Services Department, on proposals relating to a commitment standard for jail inmates, the role of probation and parole agents in emergency detentions and guardianship for psychotropic medications (March 11, 1987).

39. Letter, from William McCulley, Coordinator, Division of Restorative Care, Portage County Community Human Services Department, on proposals relating to a commitment standard for jail inmates, the role of probation and parole agents in emergency detentions and guardianship for psychotropic medications (March 12, 1987).

40. Letter, from Mike Lukowicz, Mental Health Coordinator, Winnebago County Unified Board, on a proposal for a commitment standard for jail inmates (March 12, 1987).

41. Letter, from Ed Paulson, Deputy Director, Pierce County Mental Health and Alcohol and Other Drug Abuse Center, on proposals relating to a commitment standard for jail inmates, the role of probation and parole agents in emergency detentions and guardianship for psychotropic medications (March 16, 1987).

42. Letter, from Thomas G. Kuckkahn, MSW, Program Director, Manitowoc County Community Board, on proposals relating to a commitment standard for jail inmates, the role of probation and parole agents in emergency detentions and guardianship for psychotropic medications (March 16, 1987).

43. Letter, from Peter W. Schuler, Waukesha County Community Human Services Department, on proposals relating to a commitment standard for jail inmates, the role of probation and parole agents in emergency detentions and guardianship for psychotropic medications (March 18, 1987).

44. Letter, from Douglas A. Johnson, Program Director, Comprehensive Community Services Agency, Washington County, on proposals relating to a commitment standard for jail inmates, the role of probation and parole agents in emergency detentions and guardianship for psychotropic medications (March 19, 1987).

45. Letter, from James R. Dunkel, Program Coordinator, Florence County Combined Services Board, on proposals relating to a commitment standard for jail inmates and the role of probation and parole officers in emergency detentions (March 19, 1987).

46. Selected reprinted articles from The Philadelphia Inquirer, related to commitments (1987).

47. Letter, from John L. Gruetzmacher, ACSW, Assistant Director, Lakeland Counseling Center of Walworth County, on proposals relating to a commitment standard for jail inmates and the role of probation and parole agents in emergency detentions (March 23, 1987).

48. Letter, and attachment, from Sharon Vander Zyl, MSN, RN, CS, on commitment standards (March 25, 1987).

49. Letter, from Donald D. Lord, Manager, Governmental Relations, The State Medical Society of Wisconsin, on commitment standards (April 3, 1987).

50. Letter, from Darold A. Treffert, M.D., 51.42 Program Director, Fond du Lac County, on commitment standards (April 4, 1987).

51. A memorandum, from Senator Susan Engeleiter, The Need for a New Mental Commitment Standard (April 7, 1987).

52. "Rules on Commitment in Dire Need of Revision," Milwaukee Sentinel (April 15, 1987).

53. Fiscal Estimate to WLCS: 393/1, 1987-88 Annual Costs, prepared by the Office of Mental Health, DHSS (April 21, 1987).

54. A memorandum, from Deborah Allness, Director, Office of Mental Health, Bureau of Community Programs, Division of Community Services, DHSS, Draft Proposal Budget Estimates (April 23, 1987).

55. A memorandum, from Deborah Allness, Director, Office of Mental Health, Bureau of Community Programs, Division of Community Services, DHSS, Fiscal Estimate to WLCS: 414/1, Relating to Funding for Community Support Programs (April 30, 1987).

56. A memorandum, from Deborah Allness, Director, Office of Mental Health, Bureau of Community Programs, Division of Community Services, DHSS, Response to Questions Concerning WLCS: 415/1, Relating to Medical Assistance (MA) for Community Support Program Services (May 1, 1987).

57. A memorandum, from Rosalyn Libman, Alliance for the Mentally Ill of Greater Milwaukee, on commitment standards (May 1, 1987).

## APPENDIX 4

## COMMITTEE MATERIALS:

## ADVISORY COMMITTEE ON MENTALLY ILL INMATES

APPENDIX 4

COMMITTEE MATERIALS:

ADVISORY COMMITTEE ON MENTALLY ILL INMATES

STAFF MATERIALS

1. Staff Brief 86-10, Mental Health Services to State Corrections Inmates (July 23, 1986).

2. Staff Brief 86-11, State Requirements and Assistance Relating to Mental Health Services for Inmates of County Jails (July 24, 1986).

3. MEMO NO. 1, Correctional Halfway Houses (October 20, 1986).

4. Discussion Paper 86-6, Possible Changes in Laws and Programs Related to Mentally Ill Inmates (December 3, 1986).

5. MEMO NO. 2, Studies Related to the Effect of Community Support Programs on Time Spent in Jail or Prison (December 9, 1986).

6. MEMO NO. 3, Persons on Probation and Parole with Mental Health Problems or Referred to County Mental Health or Developmental Disabilities Agencies (December 10, 1986).

OTHER MATERIALS

1. Jail Advisory Committee Report to the Administrator of the Division of Corrections (1985).

2. Memorandum, by Walter Dickey, Administrator, Division of Corrections, Department of Health and Social Services (DHSS), Review of the Committee Report and Response (September 5, 1985).

3. Letter, from Linda Reivitz, Secretary, DHSS, listing suicides which occurred in jails, municipal lockups and juvenile detention facilities from 1980 through 1985 and a description of a DHSS, Division of Corrections' budget request relating to county jails (July 30, 1986).

4. Letter, from Martin Drapkin, Community Services Specialist, Department of Justice (DOJ), Division of Law Enforcement Standards, on training of jail officers on care and supervision of inmates who may be emotionally distressed or mentally ill (July 30, 1986).

5. Letter, from Sheila Dresen, Director, Bureau of Clinical Services, Division of Corrections, on the number of suicides of state prison inmates between 1980 and 1986 (September 5, 1986).

6. Two charts and three tables, submitted by Sheriff Jerome Lacke, Dane County, relating to Dane County Jail bookings and daily populations.

7. Excerpts from jail officer preparatory training manuals, Identify and Follow Guidelines for Suicide Prevention, 5.7.1 (undated) and Identify and Follow Guidelines for Supervision of "Special" Inmates, 5.7 (undated).

8. Written remarks, Hospital? Jail? Streets?: The Treatment Dilemma, by Bernard I. Cesnik, Manager of Emergency Services, Mental Health Center of Dane County, Inc., prepared for the symposium "The Criminal Justice System and the Mentally Ill: A Call for Action," Madison, Wisconsin (October 28, 1986).

9. Written remarks by Mr. Bob Sayner, Assistant Executive Director, Wisconsin Correctional Service (November 6, 1986).

10. Letter, from Steve E. Bablitch, Administrator, Division of Corrections, DHSS, responding to questions regarding halfway houses and an office of jails (January 15, 1987).

11. Memorandum by Eileen Hirsch, Assistant State Public Defender, on WLCS: 204/1, relating to commitment standard for inmates (January 22, 1987).